

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

The proposed amendments adopt a new rule 185—4.6(123), which establishes guidelines for class “C” beer permit holders to fill and sell beer in a container other than the original container, subject to and mandated by Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and pursuant to rules adopted by the Alcoholic Beverages Division. The amendments are necessary to:

- Establish filling and refilling requirements,
- Establish sealing requirements, and
- Establish restrictions for the filling, refilling and selling of beer in a container other than the original container.

The proposed amendments also define three terms to provide clarity for the reader. One definition is added in new rule 185—4.6(123), while two definitions are added to rule 185—4.1(123) because the definitions are equally applicable to other retail permit holders.

Stakeholders were consulted during the drafting of the proposed amendments. The proposed amendments were then circulated to stakeholders prior to the filing of this Notice.

Any person or agency may submit written comments concerning the proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tyler Ackerson, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; Internet e-mail address: Ackerson@iowaabd.com.
5. Be received by the Alcoholic Beverages Division no later than 4:30 p.m. on December 15, 2015.

A meeting to hear requested oral presentations is scheduled for Friday, December 18, 2015, at 10 a.m. in the Board Room at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

After analysis and review of the rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 123 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrules 4.1(3) and 4.1(4):

4.1(3) “Growler” means any fillable and sealable glass, ceramic, plastic, aluminum or stainless steel container designed to hold only beer or high alcoholic content beer.

4.1(4) “*Original container*” means a vessel containing an alcoholic beverage which bears a label approved by the Alcohol and Tobacco Tax and Trade Bureau and which has been securely capped, sealed or corked at the location of manufacture.

ITEM 2. Adopt the following new rule 185—4.6(123):

185—4.6(123) Filling and selling of beer in a container other than the original container by class “C” beer permit holders. Class “C” beer permit holders and their employees may fill, refill and sell beer in a container other than the original container, otherwise known as a growler as defined in subrule 4.1(3), subject to the requirements and restrictions provided in Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14, and in this rule.

4.6(1) Definition.

“*Beer*,” for the purpose of this rule, means “beer” as defined in Iowa Code section 123.3(7) and “high alcoholic content beer” as defined in Iowa Code section 123.3(19).

4.6(2) Sales criteria and restrictions. All sales made pursuant to this rule shall be made in-person. Beer packaged and sold pursuant to this rule shall not be delivered or direct-shipped to consumers.

4.6(3) Filling and refilling requirements.

- a. A growler shall have the capacity to hold no more than 72 ounces.
- b. A growler shall be filled or refilled only by the permittee or the permittee’s employees who are 18 years of age or older.
- c. A growler shall be filled or refilled only on demand by a consumer at the time of the in-person sale.
- d. A growler shall be filled or refilled only with beer from the original container procured from a duly licensed wholesaler.
- e. A retailer may exchange a growler to be filled or refilled, provided the exchange occurs at the time of the in-person sale.
- f. The filling or refilling of a growler shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.6(4) Sealing requirements. A filled or refilled growler shall be securely sealed at the time of the sale by the permittee or the permittee’s employees in the following manner:

- a. A growler shall bear a twist-type cap, screw-on cap, flip-top lid, swing-top lid, stopper, or plug.
- b. A plastic heat shrink wrap band, strip, or sleeve shall extend around the twist-type cap, screw-on cap, flip-top lid, or swing-top lid or over the stopper or plug to form a seal that must be broken upon the opening of the growler.
- c. The heat shrink wrap seal shall be so secure that it is visibly apparent when the seal on a growler has been tampered with or a sealed growler has otherwise been reopened.
- d. A growler shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed growler is unopened and the seal has not been tampered with and the contents of the growler have not been partially removed.

4.6(5) Restrictions.

- a. Beer shall not be consumed on the premises of a class “C” beer permit holder.
- b. A growler shall not be filled in advance of a sale.
- c. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.
- d. A growler filled pursuant to this rule shall not be sold or otherwise distributed to a retailer.
- e. A permittee or a permittee’s employees shall not allow a consumer to fill or refill a growler.
- f. The filling, refilling and selling of a growler shall be limited to the hours in which beer may be legally sold.
- g. A filled or refilled growler shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.
- h. An original container shall only be opened by the permittee or the permittee’s employees for the limited purpose of filling or refilling a growler as provided in this rule.

4.6(6) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the permittee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 123.132 as amended by 2015 Iowa Acts, Senate File 456, section 1, and Senate File 510, section 14.